



To the Honorable Council  
City of Norfolk, Virginia

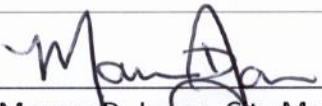
February 9, 2016

From: Jared Chalk, Senior Business Development  
Manager

**Subject:** An ordinance approving up  
to \$5,000,000 in payments to the  
Economic Development Authority to  
incentivize economic development in  
Downtown

Reviewed:   
Ronald H. Williams, Jr., Deputy City Manager

**Ward/Superward:** 2/6

Approved:   
Marcus D. Jones, City Manager

**Item Number:**

**R-3**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** ADP, LLC.

III. **Description:**

This agenda item is an ordinance to authorize the City Manager to make certain payments annually in an aggregate amount of \$5,000,000 to the Norfolk Economic Development Authority (EDA) to incentivize the relocation of a significant number of jobs to Norfolk by ADP, LLC.

IV. **Analysis**

ADP, LLC, a leading global provider of human capital management solutions, is considering the relocation of a significant number of professional service jobs. Norfolk's incentive package is qualified to leverage additional support from the Commonwealth of Virginia to ADP, LLC. The combined package will enable the City and Commonwealth to successfully partner with ADP, LLC on this business venture.

V. **Financial Impact**

The incentive will be realized through a performance based grant agreement between the EDA and ADP, LLC, and will be subject to annual appropriation by City Council. ADP, LLC's potential investment will provide for capital improvements and a lease of Class A office space in Downtown. This grant enables the City of Norfolk to remain competitive for the relocation of professional service jobs that can generate significant increases in annual local taxes. Funds for the performance based grant will be completely generated by the tax revenues from ADP, LLC's operations in Norfolk.

**VI. Environmental**

N/A

**VII. Community Outreach/Notification**

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

**VIII. Board/Commission Action**

N/A

**IX. Coordination/Outreach**

This letter and ordinance have been coordinated with the Economic Development Authority, the Department of Development, the Office of Budget and Strategic Planning, and the City Attorney's Office.

Supporting Material from the Department of Development:

- Ordinance
- Cooperation Agreement
- Grant Agreement

Form and Correctness Approved:

By BA Pilleo  
Office of the City Attorney

Contents Approved:

By [Signature]  
Department of Development

NORFOLK, VIRGINIA

## ORDINANCE No.

AN ORDINANCE AUTHORIZING THE CITY OF NORFOLK TO ENTER INTO A COOPERATION AGREEMENT FOR THE PAYMENT OF CERTAIN FUNDS TO ENABLE THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK TO ENTER INTO AND FULFILL ITS OBLIGATIONS UNDER A GRANT AGREEMENT WITH ADP, LLC.

- - -

WHEREAS, the Authority and the City are vitally concerned with the attraction and retention of new businesses; and

WHEREAS, the Authority has received a request from ADP, LLC (the "Grantee"), for a multi-year grant not to exceed \$5,000,000.00 (the "Grant") to induce the Grantee to assist in equipping an office building (the "Building") in the City of Norfolk (the "Project"); and

WHEREAS, in consideration of the receipt of the Grant from the Authority, the Grantee has agreed to locate its business operations at the Building and has represented to the Authority that the Project is expected to provide a significant number of new permanent full time jobs, which will benefit the residents and businesses in downtown Norfolk, the City, South Hampton Roads and the Commonwealth of Virginia; and



WHEREAS, pursuant to the terms of the Cooperation Agreement and subject to appropriation, the City will make payments to the Authority, upon the terms and conditions set forth in the Grant Agreement, to be up to a maximum aggregate amount over the term of the grant of \$5,000,000.00, in annual installments the amount of which will be determined in accordance with the formula set forth in the Grant Agreement; and

WHEREAS, the parties hereto desire to enter into the Cooperation Agreement for the purpose of setting forth their understandings and agreements in connection with the Grant Agreement; now, therefore

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the City Manager is authorized to enter into, correct, amend, or revise the Cooperation Agreement as he may deem necessary in order to carry out the intent of the Council and to execute the Cooperation Agreement, as corrected, amended, or revised in accordance herewith, for and on behalf of the City, subject however to approval as to form and correctness by the Office of the City Attorney.

Section 2:- That this ordinance shall be in effect from and after the date of its adoption.

## **COOPERATION AGREEMENT**

(EDA – City of Norfolk)

**THIS COOPERATION AGREEMENT** (“Cooperation Agreement”) is made and entered into as of the 9th day of February, 2016, by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK**, a duly organized and existing body corporate and politic constituting a political subdivision of the Commonwealth of Virginia (the “EDA” or the “AUTHORITY”), and the **CITY OF NORFOLK, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia (the “City”).

### **RECITALS**

**WHEREAS**, the Authority is duly established and its existence was validated pursuant to the Virginia Industrial Development and Revenue Bond Act (the "Act"), Chapter 49, Title 15.2 of the Code of Virginia of 1950, as amended (the “Code”); and

**WHEREAS**, the Authority is empowered under the Act to cooperate with the City in actions taken for the purpose of promoting economic development and the commerce, safety, health, welfare, convenience or prosperity of citizens of Virginia within the Authority's area of operation (which in the Authority's case includes the territorial boundaries of the City); and

**WHEREAS**, the Authority and the City are vitally concerned with the attraction and retention of new businesses; and

**WHEREAS**, the Authority has received a request from ADP, LLC (the “Grantee”), for a multi-year grant not to exceed \$5,000,000.00 (the “Grant”) to induce the Grantee to locate its business in downtown Norfolk (the “Project”);

**WHEREAS**, the Grantee has represented to the Authority that the Project will provide a substantial number of additional permanent full time jobs;

**WHEREAS**, Section 15.2-4905 (12) of the Code authorizes the Authority:

to accept contributions, grants and other financial assistance from . . . the Commonwealth, or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance or repair of the authority facilities, . . . or in order to make loans in furtherance of the purposes of this chapter of such money, contributions, grants, and other financial assistance, and to this end the authority shall have the power to comply with such conditions and to execute such agreements . . . as may be necessary, convenient or desirable and to agree to such terms and conditions as may be imposed; and

**WHEREAS**, Section 15.2-4905 (13) of the Code authorizes the Authority:



To make loans or grants to any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of this chapter including for the purposes of promoting economic development, provided that such loans or grants shall be made only from revenues of the authority which have not been pledged or assigned for the payment of any of the authority's bonds, and to enter into such contracts, instruments, and agreements as may be expedient to provide for such loans and any security therefor.

**WHEREAS**, Section 15.2-4901 of the Code concludes with the statement that "This chapter shall be liberally construed in conformity with these intentions," evidencing the legislative intent that all aspects of Title 15.2, Chapter 49 be broadly interpreted in order to promote and facilitate economic development in the Commonwealth and its localities; and

**WHEREAS**, the City has agreed to transfer up to \$5,000,000.00 to the Authority, subject to appropriation, upon the terms and conditions set forth in this Cooperation Agreement; and

**WHEREAS**, the parties hereto desire to enter into this Cooperation Agreement for the purpose of setting their understandings and agreements in connection with the Grant Agreement between the Authority and the Grantee (the "Grant Agreement") ; and

**WHEREAS**, on February 9, 2016, the Council of the City adopted Ordinance No. \_\_\_\_, approving the form and substance of this Cooperation Agreement, authorizing the execution and delivery hereof on behalf of the City and the performance of all obligations undertaken by the City under this Cooperation Agreement; and

**WHEREAS**, on February 10, 2016, the Board of Directors of the Authority adopted a resolution approving the form and substance of the Grant Agreement and this Cooperation Agreement, authorizing the execution and delivery thereof and hereof on behalf of the Authority, and authorizing the performance of, and agreeing to perform, all obligations undertaken by the Authority under the Grant Agreement and this Cooperation Agreement; and

**WHEREAS**, in consideration of the receipt of the Grant from the Authority, the Grantee has agreed to locate and to continuously occupy and to conduct its business operations in downtown Norfolk, which location, occupancy and use will benefit both residents and businesses in downtown Norfolk, the City, South Hampton Roads and the Commonwealth.

**NOW, THEREFORE**, in consideration of the public benefits to accrue to the City, South Hampton Roads and the Commonwealth, and the inhabitants thereof as a result of Grantee locating its business operations at the Project, the new jobs created, and of the mutual covenants hereinafter set forth, the Authority and the City agree as follows:

## AGREEMENT

1. Authorization of Expenditure and Appropriation of Funds. In order to induce Grantee's location to the City and the development, construction and equipping of the Project and subject to appropriation and to the terms and conditions of the Grant Agreement, the City agrees to transfer to the EDA annually over the term of the Grant Agreement such amounts that are sufficient to enable the Authority to make the required annual grant payments to Grantee in accordance with the terms of the Grant Agreement, as copy of which is attached hereto as Exhibit A; provided, however, in no event shall the City's obligation to make payments to the EDA pursuant to this Agreement or the EDA's obligation to make Grant payments to Grantee pursuant to the Grant Agreement exceed an aggregate amount of Five Million and 00/100 Dollars (\$5,000,000.00) over the term of the Grant Agreement. The City shall have no obligation to transfer funds to the EDA for any Grant payment if the conditions to payment set forth in the Grant Agreement have not be met.

The amount of each annual payment by the City to the Authority shall be determined in accordance with the formula for calculating the Authority's Grant to the Grantee set forth in Section 2.1 of the Grant Agreement. Transfer of funds by the City to the Authority for each annual installment of the Grant shall be subject to the appropriation of funds by the City Council of the City of Norfolk. No funds have been appropriated, and, unless and until such future appropriation is made, the City is without funding obligation.

2. EDA Obligations. The Authority agrees that the funds transferred by the City to the Authority pursuant to this Agreement shall be used exclusively for the purposes of making the Grant to Grantee. The Authority shall not be obligated to make the Grant payment in any year unless it has first received funds from the City sufficient to enable the Authority to fulfill its payment obligations under the Grant Agreement.

3. Grant Agreement. The Authority shall not enter into a Grant Agreement materially different from the Grant Agreement attached hereto without the prior written approval (which may be in letter form) of the City Attorney of the City of Norfolk. Once the Grant Agreement has been executed and delivered by the Authority and the Grantee, the Authority shall not amend, supplement or modify or permit the amendment, supplementation or modification of any provision of the Grant Agreement without obtaining the prior written consent of the City Attorney of the City of Norfolk.

4. Non-Discrimination. In carrying out this Cooperation Agreement, the EDA and the City agree not to discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin and agree to take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, sex, age or national origin. Such action shall include, but not be limited to employment, promotion, demotion, termination, rates of pay, other compensation, and selection for training including apprenticeship.



5. Applicable Law. This Cooperation Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Virginia. In the event of litigation hereunder, venue shall be in the Circuit Court of the City of Norfolk.

6. Notices. All notices or other communications required or desired to be given with respect to this Cooperation Agreement shall be in writing and shall be delivered by hand or by courier service, sent by registered or certified mail, return receipt requested, bearing adequate postage, or by reputable overnight carrier (such as Federal Express) and properly addressed as provided below. Each notice given by mail or overnight carrier shall be deemed to be given by the sender when received or refused by the party intended to receive such notice; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the party intended to receive such notice or when such party refuses to accept delivery of such notice. Upon a change of address by either party, such party shall give written notice of such change to the other party in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the date such notice would otherwise have been received.

If to the EDA:

Economic Development Authority of the City of Norfolk  
500 East Main Street, Suite 1500  
Norfolk, VA 23510  
Attention: Executive Director

With a copy to:

Kaufman & Canoles  
150 W. Main Street, Suite 2100  
Norfolk, Virginia 23510  
Attention: George Consolvo, Esq.

If to the City:

City Manager  
City of Norfolk  
1101 City Hall Building  
810 Union Street  
Norfolk, Virginia 23510



With a copy to:

City Attorney  
City of Norfolk  
810 Union Street, Suite 900  
Norfolk, Virginia 23510

7. Binding on Successors in Interest. This Cooperation Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto; provided, however, that in no event may this Cooperation Agreement or any of the rights, benefits, duties or obligations of the parties hereto be assigned, transferred or otherwise disposed of without the prior written consent of the other, which consent neither party shall be obligated to give.

8. Entire Agreement. This Cooperation Agreement constitutes the final, complete and exclusive written expression of the intents of the parties with respect to the subject matter hereof which will supersede all previous communications, representations, agreements, promises or statements.

9. Severability. If any one or more of the provisions contained in this Cooperation Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Cooperation Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.

10. Amendment, Modification, Alteration. No amendment, modification or alteration of the terms of this Cooperation Agreement shall be binding unless in writing, dated subsequent to the date hereon and duly executed by the parties herein.

11. Headings. The titles of articles and sections of this Cooperation Agreement are for reference purposes only and shall be of no binding effect.

12. Waiver. The waiver by either party of any default or breach by the other party of any of the provisions of this Cooperation Agreement shall not be deemed a continuing waiver or waiver of any other breach by the other party of the same or another provision of this Cooperation Agreement.

13. Compliance with Laws. The parties shall comply with all applicable laws, ordinances and regulations with regard to any work, use, construction, and operation done or conducted with regard to this Cooperation Agreement.

14. Rights and Remedies Cumulative. The rights and remedies provided by this Cooperation Agreement are cumulative and the use of any right or remedy by either party shall not preclude or waive its rights to use any and all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

15. Authority to Execute Agreement. Each party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Cooperation Agreement and to perform its duties under this Cooperation Agreement; the person executing this Cooperation Agreement on its behalf has the authority to do so; upon execution and delivery of this Cooperation Agreement by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and the execution, delivery, and performance of this Cooperation Agreement does not violate any bylaw, charter, regulation, law or other governing authority of the party.

16. Counterparts. This Cooperation Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

17. No Third Party Beneficiaries. This Cooperation Agreement is intended solely for the benefit of the parties hereto. This Cooperation Agreement is not intended and shall not be construed to benefit or create any rights for any third party, including, without limitation, the Grantee. It is the express intent of the parties hereto that there be no third party beneficiaries hereof.

18. Discrepancy. In the event of any conflict or discrepancy between the foregoing provisions of this Cooperation Agreement and any provisions of the Grant Agreement, the provisions of this Cooperation Agreement shall prevail with respect to the obligations of the City.

**WITNESS** the execution of this Cooperation Agreement (EDA – City of Norfolk) by the duly authorized officials of the City and the EDA as of the day and year first set forth above.

CITY OF NORFOLK

By: \_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO CONTENTS:

\_\_\_\_\_  
Director, Department of Development



APPROVED AS TO FORM AND CORRECTNESS:

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Assistant City Attorney

**[SIGNATURE PAGES CONTINUE ON NEXT PAGE]**

**[CONTINUATION OF SIGNATURE PAGES TO COOPERATION AGREEMENT  
(EDA – CITY OF NORFOLK)]**

ECONOMIC DEVELOPMENT AUTHORITY OF  
THE CITY OF NORFOLK

By: \_\_\_\_\_  
Name : \_\_\_\_\_  
Title : \_\_\_\_\_

APPROVED AS TO CONTENTS:

\_\_\_\_\_  
Executive Director, Economic Development  
Authority of the City of Norfolk

APPROVED AS TO FORM AND CORRECTNESS:

\_\_\_\_\_  
Counsel to the Economic Development  
Authority of the City of Norfolk



## GRANT AGREEMENT

THIS GRANT AGREEMENT is made as of the 9th day of February, 2016, between the ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK a duly organized and existing political subdivision of the Commonwealth of Virginia (the "Authority"), and ADP, LLC, a limited liability company ("Grantee").

### WITNESSETH:

WHEREAS, the Grantee approached the Authority and the City of Norfolk, Virginia ("City") concerning the possibility of expanding its business into a new location ("Premises") in Downtown Norfolk.

WHEREAS, occupancy of the Premises by the Grantee and the number of new jobs created thereby has been found by both the Directors of the Authority and the City Council of the City (the "City Council") to constitute a significant economic development opportunity for the City, a positive factor in achieving the economic development objectives of the City, and worthy of inducement, as set forth in the resolutions adopted by the Authority and actions taken by the City Council approving the terms herein; and

NOW, THEREFORE, WITNESSETH:

1. Definitions.

The following terms shall have the meanings set forth unless the context clearly requires otherwise:

1.1. "Premises" means a location in downtown Norfolk to be renovated and equipped as first-class office space and occupied and operated by Grantee on a continuous basis in connection with Grantee's business operations.

1.2. "Calendar Year" means the calendar year beginning January 1 and ending December 31.

1.3. "Maximum Grant Amount" means the maximum cumulative amount to be paid to Grantee over the term of the grant which shall be Five Million and 00/100 Dollars (\$5,000,000.00).

1.4. "Grant" means the annual sums to be transferred to the Grantee pursuant to the terms of this Agreement as an inducement for the Grantee to enter into a lease agreement for the Premises, subject to the Maximum Grant Amount.

2. The Grant.

2.1. *Amount of the Grant.* Subject to the conditions and limits set forth in Sections 3.1 and 3.2 below, subject to the Maximum Grant Amount, and subject to annual appropriation and transfer of funds to the Authority by the City, the Authority will pay to Grantee a sum of money each year during the Grant Term predicated upon the Grantee's occupancy and

renovation of the Premises and the Grantee's use of the Premises for its business operations, which annual grant payments shall be calculated using the following performance-based formula:

A. 0.18% of all gross receipts from the Grantee's business operations at the Premises during the applicable Calendar Year;

B. 2.125% of the increase in the assessed value of the Grantee's business tangible personal property at the Premises during the applicable Calendar Year;

C. 0.655% of the increase in the assessed value of real estate constituting the Premises during the applicable Calendar Year.

2.2. *Term of the Grant.* The term of the Grant shall commence upon Premises occupancy by Grantee, as evidenced by (a) final Certificates of Occupancy issued by the City and (b) satisfactory completion of final inspections under each permit issued by the City for Premises, and opening of the Grantee's business operations in the Premises. The Grant payments shall commence on August 1 after the end of the first full Calendar Year of occupancy and operation of the Premises and shall be paid on August 1 thereafter during the term of the Grant. The term of the Grant shall terminate when the Maximum Grant Amount has been paid to Grantee.

### 3. Conditions of the Grant.

The obligation of the Authority to disburse the Grant is subject to the satisfaction of the conditions set forth below.

3.1. *Conditions to Initial Disbursement.* The initial disbursement of the Grant by the Authority shall be subject to the satisfaction of the following conditions:

A. The renovation and equipping of the Premises has been completed, as evidenced by the final certificate of occupancy and building permit issued by the City for such work, documentation reasonably satisfactory to the Authority of such qualifying costs for renovating and equipping the Premises, and by such other evidence, certified as complete and accurate by the project architect and Grantee, as the Authority may reasonably request. Grantee shall furnish such documentation as is reasonably necessary for the Authority to verify that there are no fewer than \_\_\_\_\_ full-time employees employed by the Grantee at the Premises (the "New Jobs").

B. The Premises shall be fully operational and open for business, and the Grantee shall have commenced its business operations at the Premises.

C. The representations and warranties set forth below shall be true and correct as of the date of this Agreement and shall continue to be true and correct at the time of the proposed disbursement of the initial Grant payment.

D. The real estate tax assessment(s) for the Premises for the two preceding tax years (July 1 to June 30) shall have been established and the Grantee shall have delivered, or caused to be delivered, to the real estate assessor all information reasonably requested



by him or her to establish the real estate tax assessment for the property comprising the Premises in the tax year in which the Grantee opens for business at the Premises.

E. The City shall have calculated and advised the Authority in writing of the amount of the initial disbursement, the City Council of the City shall have appropriated funds for the then current Grant payment and shall have transferred such funds to the Authority. The City's calculation of the amount of the initial Grant payment shall be deemed accurate and correct absent manifest error.

3.2. *Conditions to Each Annual Grant Payment.* Each subsequent disbursement of the Grant shall be subject to the satisfaction of the following conditions:

A. The conditions to the initial annual Grant payment shall have been satisfied.

B. Grantee shall have continuously operated its business at the Premises, shall have maintained at least ninety-five percent (95%) of the New Jobs created by Grantee's occupancy of the Premises, and shall not have modified its lease for the Premises to reduce the level of Grantee's occupancy of the Premises or assigned or otherwise transferred all or any portion of the Premises such that Grantee is no longer occupying the entirety of the Premises. Upon the expiration or sooner termination of Grantee's lease of the Premises, upon a modification of the lease for the Premises resulting in a reduction in the level of Grantee's occupancy of the Premises, or upon the assignment of the lease or a sublease of all or any portion of the Premises by Grantee such that Grantee is no longer fully occupying the entirety of Premises, or if Grantee abandons the Premises or fails to continuously operate its business from the Premises, the Grant term shall terminate immediately and no further Grant payments shall be made by the Authority. Further, in the event of a default by Grantee in the payment of rent under the its lease of the Premises, which default continues for a period in excess of twenty (20) days after the due date, the Authority shall be notified in writing of such failure to pay and the Authority shall make no further Grant payments to Grantee until such time the default in payment is remedied; provided, however, the Authority shall not resume payments to Grantee if Grantee is not then occupying the Premises. The execution and delivery of the lease by Grantee for the Premises shall occur on or before April 1, 2016. For purposes of this Agreement, "continuously operate" shall mean every weekday during normal business hours, excluding holidays.

C. The representations and warranties set forth below shall be true and correct as of the date of this Agreement, and shall continue to be true and correct at the time of the proposed disbursement of each year's Grant payment.

D. Based upon such documentation as the City deems appropriate, the City shall have calculated and advised the Authority in writing of the amount of the current Grant payment, the City Council of the City shall have appropriated funds for the Grant, and the City shall have transferred such funds to the Authority. The City's calculation of the amount of each annual Grant payment shall be deemed accurate and correct absent manifest error.

3.3. *Reduction in Size of Premises or Number of Employees.* In the event the Grantee fails to continuously maintain at least ninety-five percent (95%) of the New Jobs resulting



from Grantee's occupancy of the Premises or in the event Grantee reduces the level of Grantee's occupancy of its Premises or assigns, subleases or otherwise transfers its lease for the Premises or rights to all or any part of the Premises, the Maximum Grant Amount shall be prorated to reflect the decreased number of new jobs and reduced area of occupancy of the Premises.

4. Representations and Warranties.

GRANTEE represents and warrants to the Authority that:

4.1. *Due Organization, Authority and Qualification.* Grantee is a duly organized and validly existing limited liability company under the laws of the State of its organization, is registered to do business in Virginia, is in good standing in the State of its organization, and has the full power and authority to own its properties and other assets and to transact the business in which it proposes to engage at the Premises.

4.2. *Taxes.* GRANTEE has filed and shall file all tax returns which are required to be filed in the Commonwealth of Virginia and elsewhere and has paid all taxes (including interest and penalties) which have become due pursuant to such returns or pursuant to any assessment or notice of tax claim or deficiency received by it. All tax liabilities within the Commonwealth of Virginia and elsewhere were adequately provided for when due and are now shown current on the books of Grantee. No material tax liability has been asserted by the Internal Revenue Service, the Commonwealth of Virginia, the City, or any other jurisdiction for taxes (or interest or penalties thereon) in excess of those already paid.

4.3. *Compliance with Laws.* To Grantee's best knowledge, Grantee and all of its assets and properties located in the Commonwealth of Virginia, including without limitation the Premises, are and shall be in compliance in all material respects with all applicable laws, rules and regulations of each Federal, state, municipal or other governmental department, agency or authority, including without limitation the Americans with Disabilities Act of 1990, the regulations promulgated thereunder, and all applicable environmental, land use and zoning laws and regulations, to the extent applicable.

4.4. *Information Necessary to Calculate Grant Payments.* Reports of gross receipts and business tangible personal property required by law to be filed with the Tax Commissioner of the Commonwealth of Virginia or the Commissioner of Revenue of the City for the applicable tax year have and will be timely filed and copies delivered to the Authority, and Grantee shall have provided all information needed by the City, the State Tax Commissioner, the City Assessor, the City Commissioner of Revenue, the City Treasurer, and the Office of the City Manager to calculate each Grant payment.

5. General Matters.

5.1. *Authority Obligations Subject to Appropriation; Exculpation.*

A. All obligations of the Authority hereunder for the disbursement of the Grant and any other payment of money are subject to and expressly conditioned upon funds being appropriated, calculated and approved for such purpose by the City Council, the amount of Grantee's grant payment being calculated and approved by the City, and the funds being delivered



to the Authority, and shall not at any time constitute a legal obligation of the Authority for the disbursement of the Grant or the payment of money except to the extent so appropriated and delivered.

B. Neither the directors of the Authority nor any person executing this Agreement on behalf of either party shall be liable personally thereon by reason of the execution and delivery hereof. This Agreement is not, and shall not be deemed to constitute, a general obligation of the Commonwealth of Virginia or any political subdivision thereof, including the Authority and the City, and neither the Commonwealth of Virginia nor any such political subdivision thereof shall be liable thereon, nor in any event shall this Agreement be payable out of funds or properties other than as set forth herein. This Agreement shall not constitute an indebtedness within the meaning of any Commonwealth of Virginia municipal debt limitation or restriction.

C. No covenant, agreement or obligation contained in this Agreement shall be deemed to be a covenant, agreement or obligation of any present or future director, officer, employee or agent of the Authority or Grantee in his or her individual capacity, and no such director, officer, employee or agent shall be subject to any liability under this Agreement or with respect to any other action taken by him or her.

5.2. *Assignment.* Grantee may not assign its rights under this Agreement without the prior written consent of the Authority and the City.

5.3. *Waiver.* The failure of the Authority or Grantee to insist upon strict performance of any of the terms or provisions of this Agreement or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy. No waiver by the Authority or Grantee of any term or provision of this Agreement shall be deemed to have been made unless expressed in writing and duly signed by the Authority or Grantee, as applicable.

5.4. *Severability.* If any clause or provision of this Agreement is or becomes illegal, invalid or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, then the remaining parts of this Agreement shall not be affected, and said remaining parts of this Agreement shall be enforceable, to the extent they are consistent with the spirit and intent of this Agreement in its original form.

5.5. *Licensee and Permits.* It shall be the ultimate responsibility of Grantee at its expense to secure all licenses and permits required to be obtained by it with respect to renovation, improvement, completion, equipping and occupancy of the Premises.

5.6. *Notices Applicable Law.* This Agreement shall be construed under and shall be governed by the laws of the Commonwealth of Virginia. In the event of a conflict arising under this Agreement, venue shall be in the Circuit Court of the City of Norfolk.

5.7. *Interpretation.* For the purpose of construing this Agreement, unless the context indicates otherwise, words in the singular number shall be deemed to include words in the plural number and vice versa, words in one gender shall be deemed to include words in other genders, and the word "person" shall be deemed to include a corporation or partnership. Headings



or Articles and Sections are inserted only for convenience and are not, and shall not be deemed a limitation on the scope of the particular Articles or Sections to which they refer.

5.8. *Notices.* All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be delivered by hand or by courier service (including reputable overnight courier service such as UPS), or sent by registered or certified mail, return receipt requested, bearing adequate postage and properly addressed as provided below. Each notice given by mail shall be deemed to be given by the sender when received or refused by the party intended to receive such notice; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the party intended to receive such notice or when such party refuses to accept delivery of such notice. Upon a change of address by either party, such party shall give written notice of such change to the other party in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the third day after such notice is sent.

To the Authority:	Economic Development Authority of the City of Norfolk 500 E. Main Street, Suite 1500 Norfolk, VA 23510
With a copy to:	Kaufman & Canoles, P.C. 150 W. Main Street, Suite 2100 Norfolk, VA 23510 Attn: George L. Consolvo
Copy to:	City Attorney City of Norfolk 810 Union Street, Suite 900 Norfolk, VA 23510
To Grantee:	Cassidy Turley, Inc. d/b/a Cushman & Wakefield Attn: ADP Lease Administration 721 Emerson Road, Suite 300 St. Louis, MO 63141
Copy to:	ADP, LLC One ADP Boulevard, MS 325 Roseland, NJ 07068 Attn: General Counsel

5.9. *Non-Discriminatory Policies.*

A. Grantee will comply with all applicable laws regarding the discrimination of employees or applicants for employment because of the race, religion, color, sex or national origin of the employee or applicant for employment. Grantee agrees to post, to the extent required by any applicable laws, in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. Grantee, in all solicitations or advertisements for employees placed by or on behalf of Grantee, will state, to the extent required by any applicable laws, that Grantee is an equal opportunity employer.

C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

5.10. *Third Party Beneficiaries.* The City shall be a third party beneficiary of this Agreement. Except for the City, this Agreement is intended solely for the benefit of the parties hereto. Except for the City, this Agreement is not intended and shall not be construed to benefit or create any rights for any third party, including, without limitation, the developer or owner of the Premises. It is the express intent of the parties hereto that there be no third party beneficiaries hereof, except for the City.

5.11. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties with respect to the Grant, supersedes all prior understandings and writings and may be amended or modified only by a writing signed by the Authority and Grantee.

[Signature Page Follows]

WITNESS the following signatures, thereunto duly authorized:

ECONOMIC DEVELOPMENT  
AUTHORITY OF THE CITY OF NORFOLK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ADP, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

APPROVED AS TO CONTENTS:

\_\_\_\_\_  
Executive Director, Economic  
Development Authority of the City of  
Norfolk

APPROVED AS TO FORM AND  
CORRECTNESS:

\_\_\_\_\_  
Counsel to the Economic Development  
Authority of the City of Norfolk